

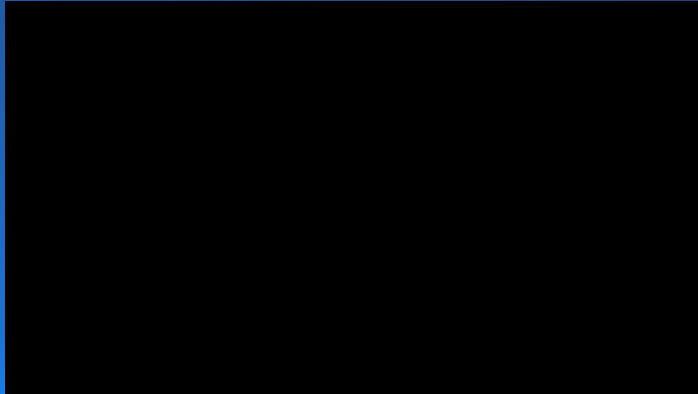
Why do we have H-2B Rules & Regulations:

- Protect the wages & working conditions of similarly employed U.S. workers.
- Prevent Fraud and Abuse of the program which would allow H-2B employers to have unfair business advantages over employers who do not have foreign labor..... level the playing field.
- Prevent abuse and victimization of foreign guest workers being hosted in Guam.
- Protect the integrity of the program in an effort to preserve Guam's ability to obtain foreign labor in time of need.



Report on Imposter:

Video on 6/1/12, the arrest of person posing as a Labor official:



Worker Registration

- **24-Hour Rule** – Employer must submit an application for the registration of the foreign worker, within 24 hours of the arrival of the worker (excluding weekends and holidays).
- **Proration** – If the initial duration of stay of the worker is less than a year, the registration fee may be prorated on a monthly basis. There is no provision to prorate on extension applications.
- **Temporary Identification (ID) Card** - If the request for the worker's ID cards cannot be processed within several days, then a temporary ID may be requested to allow the workers to begin work.



Worker Registration

- **Extension / Renewal** - ID cards must be renewed immediately upon receipt of the Notice of Action (I-797A) of an extension from USCIS. In order for workers to continue working while the extension is pending, Temporary ID cards must be obtained to avoid penalties for expired ID cards.
- **Long-term Temp. ID** - In cases where an employer is appealing a denial from USCIS, the employer may obtain long-term Temporary ID cards after paying the registration fee.



ID Cards

- Workers **MUST** display ID cards at all times while working.
- Workers **MUST** have their ID card in their possession at all times. Employers do not hold ID cards for the workers.
- Reason for requirement: DOL inspectors must be able to identify workers during worksite and housing inspections. With workers properly displaying ID cards, inspections are kept to a shorter period of time with minimum disruption to work duties.



Workers sit idle while inspectors try to determine their names and status



Temporary ID Cards

Guam Department of Labor-Alien Labor Processing & Certification Division

TEMPORARY H-2B ID CARD

Name	ALFONSO, Alvin B.		
Passport No. (For New Workers)		Expired GDOL ID No. (For Extended Workers)	73539
Employer	BME & Sons, Inc		
Occupation	Cement Mason		
Issue Date	April 6, 2011	Expiration Date	May 6, 2011
Approved By:	<i>[Signature]</i>		

NOTE: This Temporary ID card does not need to be displayed but must be in the worker's possession and produced (along with a clear copy of the worker's passport) upon request of personnel. Workers pending an Extension who have expired GDOL ID cards must continue to display their GDOL ID on the jobsite. Failure to do so may result in a fine of up to \$500.00.

Valid only with a Picture ID





A photograph showing the lower half of a person wearing a red shirt and dark pants. An identification card is attached to their belt. The background is a construction site with dirt and debris. A timestamp in the bottom right corner reads "12/20/2010 09:51".

A photograph of a man wearing a yellow hard hat and a light blue t-shirt. He has an identification card attached to his left arm. The background shows a building with a red roof.

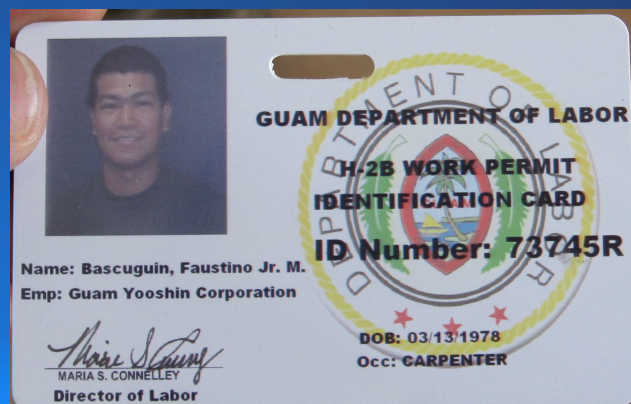
A silver, shield-shaped icon with a metallic texture and a slight shadow.

Examples of
proper display
of ID card



Examples of
Non-Display of
ID card

Regular H-2B ID Cards



Unauthorized Job Duties:

Workers may only perform job duties specified on the Temporary Labor Certification. The employer may not utilize workers in multi-trades.

- Reason: The workers are paid a specific wage rate based on the certified occupation. To use workers in other occupations may cheat the worker out of proper wages.
- Wage rate and job requirements are offered to potential U.S. workers during the labor market testing, to change the conditions of the job after the labor certification is granted may void the labor market testing.
- U.S. workers may be denied jobs due to H-2B workers performing unauthorized job duties (i.e., the employer did not hire painters because he used his H-2B workers to do the painting illegally.)



Examples of Unauthorized Job Duties:



H-2B Carpenters performing rebar work

Examples of Unauthorized Job Duties:



H-2B Cement Mason
cutting electrical conduit



H-2B Cement Mason
performing water blasting
duties



H-2B Carpenter
performing painting duties



Guam Department of Labor APPLICATION FOR TEMPORARY ALIEN LABOR CERTIFICATION																																				
<p>OFFER OF EMPLOYMENT</p> <p>1. Name of Alien (Family name in capital letters, First, Middle)</p> <p>2. Present Address of Alien (Number, Street, City, State, Zip Code or Country)</p> <p>3. Type of Visa (if in U.S.)</p> <p>The following information is submitted as evidence of an offer of employment.</p> <p>4. Name of Employer (Full name of organization)</p> <p>5. Telephone Number</p> <p>6. Address (Number, Street, City, State, Zip Code)</p> <p>7. Address Where Alien Will Work (if different from item # 6)</p> <p>8. Employer's Business Activity</p> <p>9. Name of Job Title</p> <p>10. Total Hours Per Week Basic Overtime</p> <p>11. Work Schedule Hourly a.m. p.m.</p> <p>12. Rate of Pay Basic Overtime \$ Per \$ Per Hour</p> <p>13. Describe Fully the Job to be Performed (Duties)</p> <p>14. State in detail the MINIMUM education, training and experience for a worker to perform satisfactorily the job described in item #13 above.</p> <table border="1"> <tr> <td rowspan="2">EDUCATION Enter # of yrs.</td> <td>Grade School</td> <td>High School</td> <td>College</td> <td>Degree Req'd</td> </tr> <tr> <td colspan="3"></td> <td>Major Field of Study</td> </tr> <tr> <td rowspan="2">TRAINING</td> <td>No. of Yrs</td> <td>No. of Months</td> <td colspan="2">Type of Training</td> </tr> <tr> <td>Job Offered Yrs</td> <td>Related Occupation Mos.</td> <td colspan="2">Related Occupation (Specify)</td> </tr> <tr> <td rowspan="2">EXPERIENCE</td> <td></td> <td></td> <td colspan="2"></td> </tr> <tr> <td></td> <td></td> <td colspan="2"></td> </tr> </table> <p>15. Other Special Requirements</p> <p>16. Occupational title of the person who will be the alien's immediate supervisor:</p> <p>17. Number of employees the alien will supervise:</p>										EDUCATION Enter # of yrs.	Grade School	High School	College	Degree Req'd				Major Field of Study	TRAINING	No. of Yrs	No. of Months	Type of Training		Job Offered Yrs	Related Occupation Mos.	Related Occupation (Specify)		EXPERIENCE								
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Unauthorized Projects:

The employer may only utilize the H-2B workers on projects authorized in the valid labor certification. The Project Summary Sheet lists the approved construction projects.

Additional projects may be approved by the employer amending the Project Summary Sheet.

- Additional projects must be approved. In determining an approval, ALPCD will require that appropriate bonding be submitted, the project contract, project location sketch and updated Project Summary Sheet.

- ALPCD will review to determine if the new project is appropriate based on the types of H-2B workers employed. (i.e., Approval would not be granted for electrical work if the employer only has H-2B Carpenters)



Unauthorized Projects:



DEPARTMENT OF LABOR
Alien Labor Processing & Certification Division
PROJECT SUMMARY SHEET

Company Name					ALPCD NOTES		
Address:							
Office Phone		RME Cell Phone		Site Telephone			
Project Name/Scope of Work And Location	Start Date	Completion Date	Project Contract Amount	Subcontracted Amount	Amount Completed	PROJECT NET AMOUNT	% of Completion
I hereby certify that the above information is true and correct.			TOTAL	Total Net Project Amount			

ADDITIONAL PROJECT APPROVED
This project has been approved by GDOL-ALPCD for usage of
H-2B workers and has been included in your current labor
certification

ALPCD Signature: _____
Date: _____

EMPLOYER NAME & TITLE

EMPLOYER SIGNATURE

DATE

Unauthorized Employer :

The H-2B worker can only perform services for the employer who petitioned the workers. Workers cannot be “loaned” out to other employers outside of legal sub-contract work.

- **Sideline Jobs:** It is common that construction workers perform “sideline” jobs in their off hours. This is not allowable for H-2B workers.
- **Working Outside due to Slow Work With Employer:** Workers who do not have full time work often seek work outside of the authorized employer to make ends meet. Any time that an employer does not have full time work for more than 2 weeks, the employer should consult with ALPCD.
- **Common Sense Monitoring Measures:** Employers are not always aware that their workers are performing illegal duties. Workforce housing should be monitored to ensure that workers are not leaving the housing to work illegally.



Illegal Workers:

DOL is in the process of crafting legislation to allow for civil penalties for employers who use illegal workers on job sites in Guam.

Effect on Legal Contractors: Illegal workers are usually paid less than legal workers. Taxes are not paid by nor collected from illegal workers. All of the expenses that a legitimate contractor must incur with regards to workers are not borne by an unscrupulous contractor....allowing them to underbid and get jobs that they could not have obtained if they followed the law.

Effect on U.S. workers: Every job being performed by an illegal worker is a job that should have been performed by a legal, local worker. This “shadow workforce” directly affects the ability of local workers to get steady work.



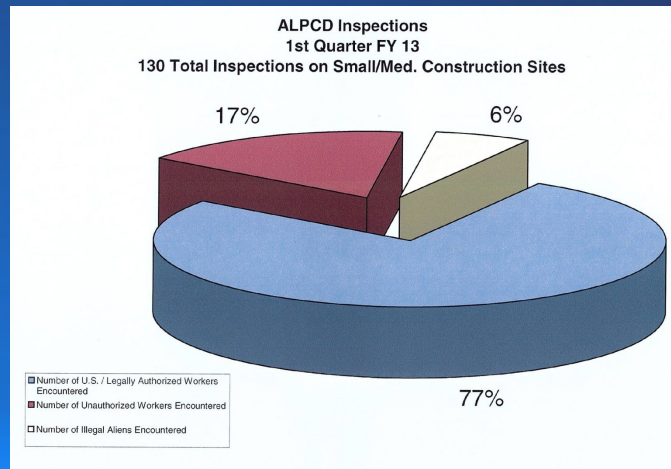
Illegal Workers:

- I-9 Requirement: Employers are required to complete DHS form I-9. If the potential worker cannot meet the document requirements, it is likely that they are not authorized to work in Guam.
- Out of Status workers - Overstays: ALPCD encounters numerous overstays during worksite inspections. However, the number of illegal workers on Guam is low compared to the U.S. mainland. We are able to identify them better.
- Workers claiming change of status: Many workers claim to have married a U.S. citizen. The marriage in itself does not grant status. The worker must obtain a work authorization or a green card to work legally.



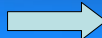
Illegal Workers:

Chart displays authorized workers (blue) versus those with no work authorization ... 23% illegal





Illegal workers found at a construction site



Illegal worker found on a farm



Fleeing illegal workers taken into custody by ICE during joint inspections.



Employer's Workplace Monthly Report:

The employer is required to file a report detailing the composition of his workforce on a monthly basis on a form provided by DOL. The report must be true and correct and certified by the employer.

Filing Deadline: No later than the 7th of each month. Weekends and holidays are NOT excluded.

Electronic Filing Authorization: Once completed, the employer may file the report via fax or email. Otherwise the report must be filed at the ALPCD office.

Importance of Accuracy: The employer CERTIFIES that the information on the report is accurate. If inaccurate information is submitted, a fine may be assessed. Management is urged to carefully review and check the report before filing.



Exit Clearances:

Before a worker can depart Guam, the employer must submit an Application for Exit Clearance which notifies ALPCD of the impending departure.

15-day filing requirement - The employer must file the Application for Exit Clearance 15 days prior to the departure of the worker. In cases of emergency or where the worker insists on leaving without giving 15 days notice, ALPCD MAY waive the requirement with proper documentation. In all cases, the Exit Clearance form MUST be submitted prior to departure.

GMHA Clearance - The employer must obtain comments from GMHA on the exit clearance per Public Law 31-87.

Wage & Hour Clearance - The employer must approach the GDOL Wage & Hour Division to obtain comments on the space provided.

Tips for compliance: Pre-sign Medical Authorization section at time of hire.



Exit Clearances:

Verification of Departure - On the Exit Clearance form, the employer certifies that they will verify the departure of the worker by visually confirming that the worker passed through the TSA screening area at the airport terminal.

Employers are reminded to make sure that workers leave or penalties may be issued.



Pay, Benefits & Deductions:

The employer **MUST** pay the wage rate on the certified GDOL750 and offer benefits listed in the job posting.

Effect on Labor Market Testing:

- Paying a lower wage rate is not complying with the labor certification and possible non-compliance with Prevailing Wage regulations.
- Paying a HIGHER wage rate voids the labor market testing. If the high wage rate was offered during the labor testing period, a qualified and available U.S. worker may have wanted to take the job at the higher rate.
- Employer can only offer benefits listed on job posting as any additional benefits may have enticed U.S. workers to take the job. Employers must extend all benefits offered to H-2B workers to all U.S. workers in same category.



Pay, Benefits & Deductions:

- Deductions for board and lodging cannot exceed \$80 p/wk unless approved by the Director of Labor.
- Deductions for air transportation, legal fees, costs associated with the petition process, even if employee agrees, are NOT allowed. These types of deductions are illegal.
- Any deductions (aside from taxes and approved board and lodging fees) should be documented and properly researched prior to the deduction being made. Seek guidance from the Wage & Hour Division if in question.
- Changes in Pay, Benefits or Deductions often MUST be handled during the renewal period or by re-doing the recruitment process.**



Workforce Housing:

- Employer is responsible to maintain their housing facilities.
- Housing must be kept in acceptable condition with regards to sanitation, safety and should be in compliance with OSHA standards.
- Apartments with 5 or less workers in each differ from traditional workforce housing. However, it is expected that the units be in a livable condition and free of health hazards.
- AG opinion pending on usage of H-2B workers to maintain facility.
- Rules require employers with more than 5 workers to make housing available. If employer brings in less than 5, they don't have to make housing available, but if they do, they must follow all applicable rules regarding workforce housing and meals.



Inspections :

Purpose of Inspections: ALPCD Inspectors conduct random and targeted inspections to ensure that employers comply with labor laws and to conduct interviews with H-2B workers.

Random Inspections – Random inspections are targeted be be about 1 minute per worker in order to minimize impact to the worksite. Inspection times drastically increase in cases where violations are noted or where workers do not have ID displayed or readily available. US workers who do not have ID available also increase inspection times.

Targeted Inspections – These types of inspections require interviews of workers or detailed observations which normally take more time. Although we strive to keep work disruption to a minimum, there are instances where we must conduct these detailed inspections.



Penalties :

Issuance of Citations – When violations that warrant civil penalties are detected, ALPCD will issue a Notice of Violation, commonly referred to as a citation.

Information on Citation- The citation will indicate the violation observed, the section of the law that was violated and the penalty amount.

Right to Appeal - The employer may appeal the citation by submitting a letter indicating that they would like to appeal the citation and asking for a hearing.

Payment of Citation- If the employer does not wish to contest the penalty, they may pay the penalty by submitting a Cashier's Check, payable to the Treasurer of Guam, to the ALPCD offices. The employer will be given an official receipt for the payment that should be retained in your records.

Consequences for Non-payment – Should the employer fail to pay for a penalty amount, ALPCD may refuse to service the employer, revoke the work permit, seek revocation of the labor certification and/or initiate legal proceedings via the Office of the Attorney General.



Appeal Process:

Employer's Request to Appeal – The employer's letter should indicate that they want to appeal the citation, identify the citation by its control number, and ask for a hearing to be scheduled.

Timely and Untimely- The appeal request must be submitted no later than 15 days from the date the citation was issued. If the appeal is filed untimely, the Hearing Officer may decide not to hear the case.

Hearing- The hearing is informal and feels more like a meeting. The employer and any who provide testimony will be put under oath prior to testifying. Written testimony may also be submitted. The employer has the right to legal counsel at the hearing, but most do not because of the informal setting.

Administrative Order- The Hearing Officer will issue a written order detailing the decision on the appeal.



Inspection Photos



Typical compliance inspection - All workers in legal status



All U.S. workers but no one had their Green Card - work stopped



Illegal worker presented base pass to try and pass for a legal resident



Worker was reported as sent home, but remained working for same H-2B employer.



Yes, we wear safety equipment when necessary





Non-Construction H-2B Inspection